

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE MOAPA BAND OF PAIUTE
INDIANS, et al.,

Plaintiff(s),

vs.

NEVADA POWER COMPANY, et al.,

Defendant(s).

Case No. 2:13-cv-01417-JAD-NJK

ORDER GRANTING MOTION TO
AMEND

(Docket No. 59)

Pending before the Court is Defendant Nevada Power Company's ("Defendant") motion for leave to file an amended answer. Docket No. 59. Plaintiff filed a response and Defendant filed a reply. Docket Nos. 61, 63. The Court finds this matter properly resolved without oral argument. Local Rule 78-2. For the reasons stated below, the Court hereby **GRANTS** Defendant's motion.

Under Fed. R. Civ. P. 15(a), "[t]he court should freely give leave when justice so requires," and there is a strong public policy in favor of permitting amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). As such, the Ninth Circuit has made clear that Rule 15(a) is to be applied with "extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (*per curiam*). Under Rule 15(a), courts consider various factors, including: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of the amendment; and (5) whether the movant has previously amended its pleading. *See id.* at 1052. These factors do not carry equal weight, however, and prejudice is the touchstone of the analysis. *See id.* "Absent prejudice, or a strong showing of any of the remaining . . . factors, there exists a *presumption* under Rule 15(a) in

1 favor of granting leave to amend.” *Eminence Capital*, 316 F.3d at 1052 (emphasis in original). The
2 party opposing amendment bears the burden of showing that amendment is not proper. *See, e.g.,*
3 *Amareld v. Tropicana Las Vegas Hotel & Resort, Inc.*, 2014 U.S. Dist. Lexis 65050, *4 (D. Nev.
4 May 12, 2014) (citing *Desert Protective Council v. U.S. Dept. Of The Interior*, 927 F. Supp. 2d 949,
5 962 (S.D. Cal. 2013)).

6 Plaintiff does not argue that it is prejudiced by the proposed amendment. Instead, Plaintiff
7 opposes the motion to amend initially by arguing that there is no “proper basis” for Defendant to
8 seek the amendment at this time. *See* Docket No. 61 at 3-4. This appears to be an argument that
9 Defendant unduly delayed in bringing the pending motion because it did not establish a basis for not
10 bringing it earlier. *See id.* The Ninth Circuit has made clear that undue delay, standing alone, is
11 generally insufficient to justify denying leave to amend. *See, e.g., DCD Programs, Ltd. v. Leighton*,
12 833 F.2d 183, 186 (9th Cir. 1987). At any rate, Plaintiff has not made a strong showing of undue
13 delay in this case.

14 The balance of Plaintiff’s opposition consists of arguments that amending the answer will be
15 futile. *See* Response at 4-8. “Denial of leave to amend on this ground is rare. Ordinarily, courts will
16 defer consideration of challenges to the merits of a proposed amendment until after leave to amend is
17 granted and the amended pleading is filed.” *Amareld*, 2014 U.S. Dist. Lexis 65050, at *6 (quoting
18 *Branch Banking & Trust Co. v. Pebble Creek Plaza, LLC*, 2013 U.S. Dist. Lexis 73723, *3 (D. Nev.
19 May 22, 2013)). Deferring ruling on the sufficiency of the allegations is preferred in light of the
20 more liberal standards applicable to motions to amend and the fact that the parties’ arguments are
21 better developed through a motion to dismiss. *See, e.g., Amareld*, 2014 U.S. Dist. Lexis 65050, at
22 *6-7 (citing *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 536 F. Supp. 2d 1129,
23 1135-36 (N.D. Cal. 2008)). The Court finds the futility arguments presented in this case are better
24 addressed in a motion to dismiss.

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1 Accordingly, the motion for leave to amend is **GRANTED**. The amended answer shall be
2 filed and served within 14 days of this Order.

3 IT IS SO ORDERED.

4 DATED: May 20, 2014

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7 NANCY J. KOPPE
8 United States Magistrate Judge
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